

**DISPOSITION AND
DEVELOPMENT AGREEMENT
(_____, 2019)**

(DDA)

CITY OF MOUNTAIN VIEW

AND

Lot 12 Residential Development

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DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT ("Agreement") is dated as of _____, 2019 ("DDA Effective Date") and is made by and between the CITY OF MOUNTAIN VIEW, a California Charter City and municipal corporation ("CITY"), and _____ ("DEVELOPER"), affecting certain real property located in the City of Mountain View, County of Santa Clara, State of California (as more particularly described in Section 1.1 below and **Exhibits A and B** attached hereto and incorporated herein by this reference).

RECITALS

CITY and DEVELOPER are entering into this Agreement on the basis of the following facts, intentions and understandings, and hereby agree as follows:

A. CITY is the owner of fee title of a surface parking lot identified as Lot 12 (APN _____), as more particularly described below ("Site").

B. CITY is entering into this Agreement as property owner and not in its capacity as the land use authority.

C. In _____ 2019, CITY issued a Request for Proposals to develop and lease the Site with the primary objective of securing a primarily residential project benefitting Mountain View's vibrant downtown and proximity to the Mountain View Transit Center, and replacing the number of public parking spaces.

D. CITY selected DEVELOPER as most qualified development team based on its experience and proposal. DEVELOPER proposes and desires to construct _____, together with other site improvements, all as further described herein, which may be constructed on the Site.

E. Concurrently herewith, DEVELOPER and CITY have executed that certain ground lease ("Ground Lease") in the form attached hereto as **Exhibit C-1**. The Ground Lease has been deposited into escrow as provided in Section 6.2 below.

F. On _____, the City Council of CITY held a Public Hearing on this Disposition and Development Agreement and authorized the City Manager to execute this Agreement and the Ground Lease.

G. CITY has determined that the development of the Project (defined in Section 1.1 below) on the Site pursuant to this Agreement is consistent with the Downtown Precise Plan designation in CITY's General Plan, although an exception will be required because, _____.

H. CITY and DEVELOPER have concluded that DEVELOPER has the necessary expertise, skill and ability to carry out the commitments contained in this Agreement and the Ground Lease.

I. DEVELOPER and CITY understand and agree that entering into this Disposition and Development Agreement does not constitute approval of the proposed Project. CITY must perform an environmental analysis under the California Environmental Quality Act "CEQA"), including a traffic analysis and such other reviews as it deems necessary before the proposed Project can be presented to the City Council for its consideration.

J. CITY has determined that this Agreement is in the best interest of CITY and that implementation of this Agreement will further the goals and objectives of the General Plan and Downtown Precise Plan and the desire for additional downtown public parking and a long term revenue stream for the CITY.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, incorporated herein by reference, the premises set forth herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.1 Definitions. It is the intent of the Parties that the capitalized undefined terms used in this Agreement and any other terms not otherwise defined shall be defined as set forth in the Ground Lease. In addition to the definitions contained within the body of this Agreement, the terms set forth below shall have the following meanings:

a. "Affiliate" of DEVELOPER shall mean _____ and any corporation, joint venture, partnership, limited-liability company or other person or entity which directly, or indirectly through one or more intermediaries, controls, is under common control with or is controlled by _____ or DEVELOPER. For purposes of this Agreement, "control" means the direct or indirect holding of a voting interest in the entity sufficient to affect or direct the affairs of the entity and/or a direct or indirect ownership interest of at least fifty percent (50%) of all outstanding voting interests of the controlled entity.

b. "Agents" with respect to any person, means any other person for whom such person is legally responsible (including, without limitation, the officers, directors, employees, agents, consultants, personal representatives and independent contractors acting within the scope of their relationship.

c. "Agreement" shall mean this Disposition and Development Agreement ("DDA").

d. "Business Day" means each day of the year other than Saturdays, Sundays, holidays, and days the City of Mountain View's City Hall is not open to the public for business.

e. "CITY" shall mean the City of Mountain View, California, a California Charter City and municipal corporation, operating through its governing body, the City Council and its various departments.

f. "City Council Approval" shall mean the City's approval of the Planned Community Permit (PCP) and any Heritage Tree Removal Permit, with imposed conditions, if any.

g. "Closing" shall mean the close of escrow and conveyance of a leasehold interest in the Site by CITY to DEVELOPER as provided in Article 6.

h. "Commencement Date" shall mean the commencement of the terms of the Ground Leases, which shall commence on the "Effective Date" of the Ground Leases (as defined therein).

i. "Completion Guaranties" means a guaranty in the form required pursuant to Section 11.1.

j. "Contamination" has the meaning given to it in the Ground Lease.

k. "DEVELOPER's Contamination" means any Contamination caused by the placement, discharge, emission or release of a Hazardous Material: (i) into the soils, surface water, groundwater or air of the Site (excluding Landlord's Contamination as defined in the Ground Lease) by DEVELOPER or DEVELOPER's Agents during the Lease Term; or (ii) into the Leasehold Improvements or on or about the Site, or the soil, groundwater, surface water or air thereof, by DEVELOPER or DEVELOPER's Agents during the Lease Term, or (iii) which originates from, and migrates from the soil, surface water, groundwater or air of the Site after the date on which DEVELOPER or its Affiliate acquires the Site and for which DEVELOPER or such DEVELOPER's Agent has environmental responsibility.

l. "DEVELOPER's Proposal" shall mean the _____, 2019 Response to RFP for Development Opportunity FOR Lot 12 submitted by _____ in response to CITY's Request for Proposal ("RFP") dated _____, 2019 and selected by CITY.

m. "Environmental Documents" has the meaning given to it in the Ground Lease.

n. "Escrow Holder" shall mean _____.

o. "Force Majeure Event" shall mean prevention, delay, or stoppage due primarily to war, insurrection, terrorism, civil commotions, strikes, lockouts, labor disputes; riots, floods, earthquakes, fires, severe weather, concealed site conditions, acts of God or of a public enemy, terrorist acts, epidemics, quarantine restrictions, freight embargoes, archeological finds, inability to obtain labor, materials, or fuels or reasonable substitutes therefor, litigation, governmental (which, with respect to any action of delay claimed by CITY for purposes hereof, shall exclude CITY) restrictions, regulations, controls, action or inaction, governmental (which, with respect to any action of delay claimed by CITY for purposes hereof, shall exclude CITY) moratoriums and other causes beyond the reasonable control of the Party obligated to perform shall excuse the performance for a period equal to the period of any said prevention, delay, or stoppage, of the obligation hereunder, provided however, that no obligation for the payment of money shall be excused or delayed as a result of a Force Majeure Event with the sole exceptions being that if a Force Majeure Event results in a delay of completion of the milestones and project

approval timelines set forth in Articles 3 and 4 below, then (i) any obligation to pay money in connection with said milestones and project approvals shall be delayed until such obligation is triggered by the terms of this Agreement, and (ii) Rent due under the Ground Lease shall commence based on the trigger for such Rent, as delayed by such Force Majeure Event. The general economic condition of the economy shall not constitute a Force Majeure Event, but Tenant shall have the right to exercise the one-time forty-two (42) month financing extension provided for in this DDA. After the issuance of building permits with respect to the Office Building, or a Certificate of Occupancy with respect to the Hotel, a Force Majeure Event shall not excuse timely payment of any money due under this Agreement or the Ground Lease.

- p. "Gross Revenue" shall have the meaning given to it in the Ground Lease.
- q. "Ground Lease" shall mean that certain ground lease executed by CITY and DEVELOPER for the Site and to be delivered and effective on the Commencement Dates, as the same may be amended.
- r. "Hazardous Material" shall have the meaning given to it in the Ground Lease.
- s. "Heritage Tree Removal Permit" means the permit required by Section 32.27 of the Mountain View City Code (if applicable).
- t. "Improvement Plans" means plans stamped by a registered civil engineer showing all public improvements and other applicable work within the public right-of-way, including a traffic control plan indicating but not limited to the work areas, delineators, signs, and other traffic control measures is required for work that impacts traffic on an existing street. Improvement Plans shall be prepared in accordance with the City's Standard Design Criteria, Submittal Checklist, Plan Review Checklist and the conditions of approval of the project.
- u. "Leasehold Improvements" shall have the meaning given to it in the Ground Lease.
- v. "Lease Term" shall have the meaning given to it in the Ground Lease.
- w. "Lot 12" is located on Bryant Street between California Street and Mercy Street, identified as APN _____, as more particularly described on Exhibit A attached hereto.
- x. "Material Changes" shall have the meaning given to it in Section 9.3 below.
- y. "Office Building" shall have the meaning given to it in the Ground Lease relating to Lot 8.
- z. "Notice of Intent" has the meaning given to it in Section 4.1(d).
- aa. "Parties" shall mean DEVELOPER and CITY.

bb. "Permitted Title Exceptions" shall have the same meaning as set forth in Article 1 of the Ground Lease.

cc. "Person" shall mean and include an individual, company, firm, association, partnership, corporation, trust or other legal entity of any kind whatsoever.

dd. "Planned Community Permit" or "PCP" is the land use approval for the Project to be issued by CITY as contemplated by this DDA, and references herein to the Planned Community Permit or PCP shall mean the Planned Community Permit or PCP as may be amended or modified from time to time.

ee. "Parking Agreement" shall have the meaning as set forth in the Ground Lease.

ff. "Project" shall mean the residential and parking project as pursued in accordance with the provisions of this Agreement, including all Leasehold Improvements, taking into consideration such construction, reconstruction, demolition and redevelopment of the Leasehold Improvements as may be performed by DEVELOPER from time to time in accordance with the Lease, and shall include such other Leasehold Improvements as may be approved to be constructed pursuant to a Planned Community Permit. The basic minimum parameters of an acceptable Project as set forth herein, include:

(a) Project Parking

Not less than _____ subterranean spaces will be constructed on Lot 12. The public/private shared elements of the parking system and the common operation of the public parking spaces and private vehicle parking spaces shall be as set forth in the Ground Lease and the Parking Agreement.

gg. "Site" shall mean Lot 12, as more particularly described on **Exhibits A and B** attached hereto and incorporated herein by reference, together with any easements or other rights appurtenant to said land (subject to any easements or other encumbrances held by CITY or others and shown as Permitted Title Exceptions).

hh. "Square Feet" or "square feet of enclosed space" shall mean the gross square footage defined as follows: "The floor area enclosed within the walls of a building and measured from the outside perimeter of said walls expressed in square feet and fractions thereof as calculated pursuant to the provisions of the Mountain View Zoning Code."

ii. "Start of Construction" shall mean the earlier of the date (a) upon which DEVELOPER places fencing or other barriers to entrance by the public for parking on either Lot 12, or (b) DEVELOPER advises CITY that Lot 12 is no longer available for public parking, as provided in Section 2.2 of each Ground Lease.

jj. "Tenant" shall mean the "Tenant" under a Ground Lease.

kk. "Title Company" shall mean _____.

ARTICLE 2

CERTAIN REPRESENTATIONS AND COVENANTS

Section 2.1 Required Permits and Fees. DEVELOPER shall apply for CITY permits and any other governmental permits or approvals necessary to construct and develop the Project.

a. Development Costs. Subject to the provisions of this Agreement, DEVELOPER agrees to pay all development costs including preparation of all required submittals to the CITY in order to receive land use and environmental approvals in effect at the time applications are submitted and permits are issued.

b. Planning, Permitting and Development Fees. Subject to the provisions of this Agreement, DEVELOPER agrees to pay all customary planning, development, and building fees.

c. Insurance. At all times during the term of the Ground Lease, DEVELOPER shall maintain the insurance required under Articles 6 and 7 of the Ground Lease in accordance with the terms and conditions therein. All other covenants within said Articles 6 and 7 of the Ground Lease are hereby incorporated herein by this reference as though fully set forth.

d. DEVELOPER to Respond. DEVELOPER shall timely respond to all directions and comments made by CITY staff, incorporating changes as necessary without waiving its rights to discuss or contest any such directions or comments, indicating disagreement and the response therefor where appropriate.

Section 2.2 On-Site Utilities.

a. Subject to the provisions of the Ground Lease, DEVELOPER shall be responsible for the design and construction of all new utilities on the Site necessary to construct and serve the Project and Leasehold Improvements, subject to approval of design by CITY. DEVELOPER shall be responsible for maintaining all utilities on the Site necessary to construct and serve the Project and Leasehold Improvements unless accepted and maintained by CITY, a utility or other third party, including, but not limited to, storm drain, water, sanitary sewer, telecommunications, fiber optic conduits and cables, gas and electrical utilities. CITY hereby grants to DEVELOPER the right to access CITY rights-of-way for the purpose of placing such utilities.

Section 2.3 Off-Site Utilities. DEVELOPER shall be responsible for construction of off-site improvements necessary to construct and serve the Project as required by the PCP and subsequent improvement plans, including the following: utilities, curbs, gutters, sidewalks and driveways along the Project frontage pavement, striping and related improvements in Hope Street along the Project frontage, improvements and modifications to Blossom Lane; and all other off-site improvements required by the PCP to serve the Project and Leasehold Improvements, subject to approval of design by CITY, including a pro rata share of future traffic signalization costs if, as a part of the PCP, CITY determines such signalization is a necessary off-site improvement. If such signalization is required by the PCP, DEVELOPER shall construct the required traffic signal(s), but shall be financially responsible only for DEVELOPER'S pro-

rata share of the costs related to the Project (exclusive of the traffic related to the public parking component thereof) as determined by a traffic impact analysis prepared by or for CITY. If DEVELOPER utilizes materials in the off-site improvements other than standard City materials (such as, but not limited to, pavers, bricks, decorative stone, etc.), DEVELOPER shall, unless otherwise agreed to by CITY, remain responsible for the maintenance of such off-site improvements, at DEVELOPER's cost, during the term of the Ground Lease . Notwithstanding the above, Developer's obligations to construct, fund or maintain off-site improvements shall be limited to such off-site improvement obligations as are made specific conditions to the CITY's approval of the PCP.

Notwithstanding the above, all such work and the design of such work shall be in compliance with all applicable laws, ordinances and rules.

a. Payment. DEVELOPER's obligation to pay for utilities for the Site will commence on the Commencement Date.

Section 2.4 Site Delivery.

a. DEVELOPER has reviewed, or prior to the Commencement Date will review, the Environmental Documents.

b. DEVELOPER has received and reviewed that certain ALTA/ACSM Land Title Survey of the Site dated July 15, 2015, prepared by Mark Thomas & Company, Inc., and acknowledges that DEVELOPER has no survey objections.

c. DEVELOPER has received and reviewed that certain Preliminary Title Report of Lot 12 prepared by Fidelity National Title Company, Title No. _____, dated _____, 2019, and acknowledges DEVELOPER accepts all Permitted Title Exceptions and has no title objections.

Section 2.5 CITY Cooperation with Site Planning. During the term of this Agreement, and so long as CITY approves of the content of any such applications, forms or documents described below, CITY and DEVELOPER will promptly execute all applications and other forms (including zoning, site plan and parcel map applications) required to obtain government approvals for the Project; provided, however, that CITY's executions of such documents shall not limit its police powers, as further described in Section 12.24 of this Agreement.

Section 2.6 Managing Member. At all times up through the issuance of Certificates of Occupancy for the Project, DEVELOPER shall be subject to the rights of mortgagees and the investors in DEVELOPER in the event of a default by developer under the operating agreement of DEVELOPER or a DEVELOPER default under the construction loan for the Project, with the sole right to control the development of the Project on a day to day basis.

ARTICLE 3

SCHEDULE OF PERFORMANCE MILESTONES

Section 3.1 Schedule of Performance Milestones. A schedule of "Performance Milestones" is set forth and described in this Article 3. Subject to DEVELOPER's one-time right to extend construction as provided in Section 12.5 below, the Parties covenant to be bound by the following time commitments and obligations in processing DEVELOPER's Project according to the procedure set forth in this Section 3.1, provided that all of said dates and times shall be extended by any delays caused by Force Majeure Events and delays caused by the CITY.

Performance Milestones

1. Start of Construction of the Project within 5 months of issuance of the Notice of Intent.
4. Shell and core of the Building shall be completed within 24 months of the Start of Construction. The Building obtains a Certificate of Occupancy or within 36 months of Start of Construction.

ARTICLE 4
PROJECT DEVELOPMENT APPLICATION AND APPROVAL PROCESS

Section 4.1 Procedure.

a. Project Application and Development Review.

1. Pre-meeting. Within 60 calendar days after the DDA Effective Date, DEVELOPER and CITY will meet to review project design expectations, project-specific submittal requirements, and informal review schedule, including a tentative City Council Study Session date.
2. Contents. Within 120 calendar days after the DDA Effective Date, DEVELOPER will submit a Project Application. DEVELOPER may, at its discretion, submit an Informal Application, which shall include the following materials:
 - All items listed in the CITY's document entitled "Required Application Materials – Informal Review."
 - All project-specific submittal requirements from the Pre-meeting.
 - All plans and elevations must be prepared by a licensed architect and licensed engineer.

Only the first submittal may be an Informal Application.

If DEVELOPER does not submit an Informal Application, DEVELOPER shall submit a Formal Application, which shall include the following materials:

- All items listed in the CITY's document entitled "Required Application Materials."
 - All project-specific submittal requirements from the Pre-meeting.
 - All plans and elevations must be prepared by a licensed architect and licensed engineer.
3. CITY will review DEVELOPER's Project Application and provide written comments outlining areas that are inconsistent with CITY requirements, standards or policy within 30 calendar days.
 4. No less than 60 calendar days after the first Project Application submittal, or as soon as reasonably practical based on official City Council meetings schedule, CITY shall convene a Study Session of the City Council regarding the project.
 5. Within 60 calendar days after the City Council Study Session, DEVELOPER must resubmit a Project Application. For purposes of this Agreement, the Project Application resubmittal shall include at a minimum all of the following:
 - All items listed in the CITY's document entitled "Required Application Materials."
 - All materials requested by CITY in review of DEVELOPER's previous Project Application.
 - Materials necessary to address comments made by the City Council in the Study Session.
 - All plans and elevations must be prepared by a licensed architect and licensed engineer.
 6. CITY will review DEVELOPER's Project Application resubmittal and provide written comments outlining areas that are incomplete or inconsistent with the Formal Project Application process within 30 calendar days.
 7. Approximately 45 calendar days after the Project Application resubmittal and any subsequent resubmittal, or as soon as reasonably practical based on the official Development Review Committee (DRC) meetings schedule, CITY shall convene a DRC

meeting regarding the project. If CITY reasonably determines that DEVELOPER has not adequately addressed submittal requirements pertinent to the DRC's review, CITY may postpone the DRC meeting to a later revision.

8. For any incomplete application or comments DEVELOPER will resubmit a Project Application resubmittal addressing those comments within 45 calendar days of the CITY comments or DRC comments, whichever is later.
9. For any Project Application resubmittal, CITY will review and determine whether the application is complete or provide comments as necessary within 30 calendar days. CITY will not determine an application complete unless the DRC has provided a Recommendation of Approval and the project's California Environmental Quality Act analysis, public comment period and response to public comment are complete.
10. Approximately 30 calendar days after the CITY determines the project complete, or as soon as reasonably practical based on the official Administrative Zoning meeting schedule, CITY's Zoning Administrator shall hold a Public Hearing on the Project Application to make a recommendation to the City Council.
11. Approximately 45 calendar days after the Zoning Administrator's Recommendation of Approval, or as soon as reasonably practical based on the official City Council meetings schedule, CITY shall agendaize and schedule the Project Application for a Public Hearing.

b. Pothole Permit (Utility verification in right of way).

1. DEVELOPER will submit an Excavation Permit Application to pothole the existing utility locations in the public right of way, associated with the utility crossings and tie-ins for the DEVELOPER'S project, per CITY'S Excavation Permit Application submittal requirements 120 calendar days in advance of the Building Permit Application submittal date as identified in Article 4, Section 1.2.e.1.
2. CITY will review DEVELOPER'S Excavation Permit Application and provide written comments outlining the areas that are incomplete or inconsistent with the Excavation Permit Application process within 10 Business Days of the Excavation Permit Application submittal date.
3. DEVELOPER will resubmit its Excavation Permit Application addressing CITY comments within 5 Business Days.

4. Upon receipt of a revised Excavation Permit Application, CITY will review and provide comments as necessary within 7 Business Days, or if deemed that all Excavation Permit Requirements have been met, an Excavation Permit will be issued.

c. Improvement Plans.

1. DEVELOPER will submit Improvement Plans per the CITY'S submittal requirements and per the CITY's document entitled "Plan Review Checklist for Improvement Plans", incorporating the pothole/utility verification information performed through the Excavation Permit identified in Section 1.2.c.4, a minimum of 50 Business Days in advance of the Building Permit Application submittal date as identified in Article 4, Section 1.2.e.1.
2. CITY will review DEVELOPER's Improvement Plans and provide written comments outlining the areas that are incomplete or inconsistent with the Improvement Plan process within 30 Business Days.
3. DEVELOPER will resubmit Improvement Plans addressing CITY comments concurrent with the Building Permit Application submittal date as identified in Article 4, Section 1.2.e.1.
4. Subsequent CITY review and DEVELOPER submittal timelines of the Improvement Plans will be consistent with the Building Permit Application process timelines as identified in Article 4, Section 1.2.e.

d. Building Permit.

1. It is anticipated that within 300 calendar days, but in no event later than 330 calendar days, after the City Council approval of the Project, DEVELOPER will submit a Building Permit Application per CITY's General Plan Check submittal requirements; and notify City in writing 20 Business Days prior to building submittal.
2. CITY will review DEVELOPER's initial Building Permit Application and either approve the application or provide written comments outlining areas that are incomplete or inconsistent with Building Application process within 30 Business Days.
3. If CITY and DEVELOPER determine there are any differences of opinion as to the design and process of the Project, the parties agree to promptly meet and confer in order to attempt to resolve any concerns by either party in good faith.

4. DEVELOPER will resubmit its Building Permit Application addressing the initial CITY comments within 30 Business Days.
5. Upon receipt of the first recheck Building Permit Application, CITY will review and provide comments as necessary within 20 Business Days.
6. DEVELOPER will resubmit its Building Permit Application addressing the first recheck CITY comments within 20 Business Days.
7. Upon receipt of all subsequent rechecks of the Building Permit Application, CITY will review and provide comments as necessary within 15 Business Days.
8. DEVELOPER will resubmit all subsequent Building Permit Application rechecks addressing CITY comments within 15 Business Days.
9. Once all plan check requirements have been deemed as met, CITY will provide the DEVELOPER within 5 Business Days, in writing, that DEVELOPER's Building Permit Application has been approved via N.O.I. (the "Notice of Intent").
10. Within ninety (90) days after the date CITY notifies DEVELOPER with a Notice of Intent, DEVELOPER will close on a construction loan or loans for construction of both the Office Building and Hotel, except to the extent extended by Section 4.2 and/or 12.5 of this Agreement, a Force Majeure Event or delay by CITY.
11. Building Permits shall be issued upon request by DEVELOPER after or contemporaneously with the close of escrow for the Ground Leases.

e. Scheduling. DEVELOPER shall process a single Formal Project Application for the Project.

Section 4.2 Delays by CITY or DEVELOPER. The Parties acknowledge that it is extremely difficult to define or provide objective criteria to evaluate whether or not either Party has been responsible for a "delay" in the processing of the Formal Project Application. Therefore, the Parties agree that failure to make a good-faith effort will create a presumption of delay in the event a dispute arises with respect to the obligations relative to the Commencement Date and rent commencement under the Ground Lease. If either Party fails to perform on or before the deadlines specified above or elsewhere in this Agreement (including, without limitation, Sections 3.1 or 9.6), the time for performance by the other Party shall be extended by one (1) Business Day per each day of the nonperforming Party's delay and for each day of delay caused by Force Majeure Events. Notwithstanding the preceding, both Parties shall have a reasonable period of time to respond to requests/submissions that set forth significant design

revisions/requirements from earlier plans. This additional period shall be mutually agreed upon by the Parties in writing. Each day of delay caused by DEVELOPER shall shorten the extension under Section 12.5 by one day.

Section 4.3 Project Approvals. As Landlord, CITY's review and approval rights over the design of the Project shall be provided in keeping with the Project budget and Project construction schedule. After CITY has approved any specific set of drawings, plans and/or specifications, (collectively, "Approval Plans"), CITY, as Landlord, cannot disapprove of any existing or future construction or development that is consistent with the Approval Plans except to require that any construction or improvements comply with all codes as in effect on the date construction commences.

Section 4.4 CITY Approvals. CITY shall comply with the schedule of Performance Milestones set forth in this Article 4 and shall have the rights of review and approval set forth herein, including the rights to review and approve the following in its reasonable discretion:

- Formal Project Application to CITY.
- Plans and Specifications before submission of Building Permit Application to Building Division.

Section 4.5 DEVELOPER's Documents and Approvals. If DEVELOPER elects not to build the Project and either CITY or DEVELOPER terminates this DDA and/or the Ground Lease, all of DEVELOPER's proprietary and use rights to the approvals (subject to the rights of any third parties, including, without limitation, rights of any architects), including any architectural planning and/or design and construction drawings owned by DEVELOPER (the "Development Package"), will vest with CITY, so that a subsequent operator or developer chosen by CITY can utilize the same in the production of the Project; provided, however in the event CITY or another developer actually utilizes all or substantially all of the Development Package to develop the Project (or a project which is substantially similar in design) then DEVELOPER shall be reimbursed the costs actually incurred by DEVELOPER in creating and processing such portion of the Development Package and CITY or the subsequent operator or developer shall obtain any requisite third party consents. Notwithstanding the foregoing, if CITY has reimbursed DEVELOPER for the cost of preparing the Development Package, all approvals shall vest with CITY and DEVELOPER shall have no further rights with respect thereto. If CITY or a subsequent operator or developer desires to utilize any part of the Development Package for which DEVELOPER has not been previously reimbursed by CITY as provided herein, DEVELOPER shall have the right to sell such portion of the Development Package to any subsequent operator or developer, or CITY may purchase such portion of the Development Package from DEVELOPER. Only if DEVELOPER's Development Package documents or substantially all such documents are actually submitted (with minor changes) for approval with respect to development of a Project, will the Development Package be deemed to have been utilized, entitling DEVELOPER to reimbursement for any portion not vested with CITY as provided herein. If only part of the Development Package is utilized, then DEVELOPER will be entitled to reimbursement only with respect to such portion.

ARTICLE 5 RENT COMMENCEMENT

Section 5.1 Commencement of Rent Under Ground Lease. Subject to Section 5.2 of this Agreement, DEVELOPER shall commence the payment of Rent as provided in the Ground Lease.

Section 5.2 Moratorium. If the Project becomes subject to a moratorium, and if the moratorium continues for more than one hundred eighty (180) calendar days, DEVELOPER may terminate this Agreement and the Ground Lease by written notice to the CITY delivered within ninety (90) calendar days after the expiration of said one hundred eighty (180) day period. If DEVELOPER terminates pursuant to this Section 5.2, CITY shall not be obligated to refund to DEVELOPER any costs or expenses incurred by DEVELOPER in connection with the Project, the Ground Lease or this Agreement, except as may be required by applicable law.

ARTICLE 6 DISPOSITION OF SITE

Section 6.1 DEVELOPER's Right of Entry. Subject to the requirements of this Section 6.1, DEVELOPER and DEVELOPER's agents, employees, contractors, consultants and authorized representatives shall have the right to enter upon the Site at all reasonable times after the Effective Date and before the PCP Approval Date in order to conduct such surveys, examinations and tests as DEVELOPER deems necessary or desirable in connection with development of the Project. DEVELOPER shall keep the Site free and clear of any mechanics' liens, materialmen's liens or other liens or claims arising out of any of DEVELOPER's activities, or those of its agents, employees, contractors, consultants or representatives.

All activities of DEVELOPER, its agents, employees, contractors, consultants and representatives during, before or after any such entry onto the Site shall be at DEVELOPER's sole cost and expense. Any and all inspections and examinations of the Site shall be done in a good and workmanlike manner in accordance with all applicable Laws and shall not unreasonably disturb the quiet occupancy or enjoyment of any occupants or owners of any adjoining land. Prior to the PCP Approval Date, DEVELOPER may not carry out any construction activity on the Site which damages the Site in any way or which is physically intrusive into the ground, nor shall DEVELOPER conduct any testing or inspections which could involve known trichloroethylene or penetration into the ground water without CITY's prior written consent not unreasonably withheld, conditioned or delayed, provided that DEVELOPER may conduct customary geotechnical testing and testing in connection with relocation of utilities of same without CITY's consent. DEVELOPER shall comply with all applicable Laws in connection with any such testing. DEVELOPER may conduct tests and inspections, including (except as provided in the preceding sentence) physically intrusive tests and inspections. DEVELOPER shall indemnify, defend with competent counsel reasonably acceptable to CITY, protect and hold harmless CITY and CITY Indemnitees, from and against any and all Claims for damages to persons or property to the extent arising from all such activities of DEVELOPER on the Site, provided that DEVELOPER shall not be liable for preexisting conditions on the Site discovered by DEVELOPER, including, without limitation, CITY's Contamination. Prior to any entry pursuant to this Section 6.1, at CITY's request, DEVELOPER shall provide CITY with

evidence of commercial liability coverage as described in Section 7.1.1 of the Ground Lease. After each entry onto any part of the Site prior to the PCP Approval Date, DEVELOPER, at its sole cost and expense, shall repair all damage to the Site caused by the entry.

Upon completion of any tests or inspections performed by DEVELOPER on the Site, DEVELOPER shall furnish copies of such tests and inspections to CITY. In no event, however, shall DEVELOPER be required to disclose any communication that is privileged under applicable Laws. Except to the extent that a claim is made which would be covered by CITY's Environmental Indemnity Obligations pursuant to Section 4.5.3.1 of the Ground Lease or CITY's other indemnity obligations under Section 7.5 of the Ground Lease, DEVELOPER shall indemnify, defend with competent counsel reasonably acceptable to CITY, protect and hold harmless CITY and CITY Indemnitees, from and against any and all Claims for damages to persons or property to the extent arising from: (i) the acts or omissions of DEVELOPER or its Agents on the Site pursuant to this section; provided, however, that the foregoing shall not apply to liability resulting from the findings and conclusions of any tests, inspections, investigations or studies, or (ii) any breach of any of DEVELOPER's covenants or obligations under this Section 6.1. The provisions of the preceding sentence shall survive any termination of this Lease.

DEVELOPER's entry onto the Site and activities conducted on the Site shall not unreasonably interfere with the public parking on the Site, and during any such entry DEVELOPER shall exercise good faith efforts to minimize or avoid disruption of public parking on the Site. If DEVELOPER intends to conduct any activity on the Site which will interfere with public parking thereon, DEVELOPER shall notify CITY in writing at least ten (10) days in advance, including a description of the planned activity, the anticipated disruption to public parking, and the anticipated length of the disruption.

Section 6.2 Opening Escrow; Ground Lease in Escrow. To accomplish the conveyance of a ground leasehold interest from CITY to DEVELOPER pursuant to the Ground Lease, the Parties shall establish an escrow and execute and deliver to the Escrow Holder written instructions consistent with this Agreement and the Ground Lease. The Ground Lease shall be executed by CITY and DEVELOPER contemporaneously with the execution and delivery of this DDA. The Ground Lease, however, shall not be delivered. Instead, it shall be deposited into Escrow and shall be delivered and effective upon Closing. Terms from the Ground Lease incorporated herein by reference shall be as effective as if the same were fully set forth herein.

Section 6.3 Close of Escrow; Conveyance of Leasehold Interest. The Closing shall occur on the Commencement Date. At the Closing, CITY shall deliver and convey to DEVELOPER, and DEVELOPER shall accept conveyance of, a leasehold interest in the Site subject to the terms of this Agreement and the Ground Lease. At the Closing, a memorandum of the Ground Lease, substantially in the form attached to the Ground Lease as Exhibit D thereto, shall be recorded by the Escrow Holder in the official records of Santa Clara County, California ("Official Records"). The following shall constitute conditions to the completion of the Closing (it being understood that a Party cannot rely on and cite as basis for not closing a condition solely within its control):

a. At the Closing, the Title Company shall issue an ALTA policy of title insurance insuring DEVELOPER's leasehold interest in the Site, in the form, including with

respect to endorsements thereto, attached hereto as **Exhibit F**. The title policy premium and any endorsements desired by DEVELOPER shall be paid by DEVELOPER.

b. At the Closing, there shall have been no material adverse change in the condition of the Site from the date of this Agreement which would give DEVELOPER the right to terminate under Article 9 of this Agreement and which did not exist as of the DDA Effective Date.

c. There shall be no pending, or to CITY's knowledge threatened, condemnation of any material portion of the Site.

d. A Notice of Intent shall have been issued.

e. DEVELOPER shall have signed a Franchise Agreement or a Franchise and Hotel Management Agreement with a Qualified Hotel Brand.

f. If the Brand is not operator of the Hotel, DEVELOPER shall have signed a Hotel Management Agreement with a Qualified Hotel Operator.

g. DEVELOPER shall have an unconditional commitment from a construction lender to make a construction loan or loans to construct the Project.

h. DEVELOPER shall not have exercised the extension right in Section 12.5, or, if previously exercised, the extension right shall have expired.

i. Neither CITY nor DEVELOPER shall have exercised any termination right contained in this Agreement or otherwise.

j. CITY shall not be in breach of any of its obligations under this Agreement.

k. DEVELOPER shall not be in breach of any of its obligations under this Agreement.

Section 6.4 Condition of Title. CITY shall convey the leasehold interest in the Site free of all liens, assessments, encumbrances, encroachments, easements, permits, rights-of-way, clouds, conditions and rights of occupancy and possession, except for the Permitted Title Exceptions.

Section 6.5 Condition of the Site. On the Commencement Date, possession of the Site shall be delivered to DEVELOPER subject to the terms of this Agreement but otherwise in its "as is" condition, and DEVELOPER shall accept possession of the Site in this condition subject only to (a) CITY's representations, warranties and indemnities contained in the Ground Lease and this Agreement; and (b) performance by CITY of its obligations as set forth in the Ground Lease and this Agreement.

Section 6.6 Cost of Escrow and Closing. CITY shall bear the cost of County transfer taxes. CITY and DEVELOPER shall each bear the cost of one half of the CITY transfer taxes.

Ad valorem taxes, special assessments and possessory interest taxes shall be prorated as of the Commencement Date, on the basis that taxes accruing from and after the Commencement Date shall be the responsibility of DEVELOPER as provided in the Ground Lease. DEVELOPER shall bear the cost of title insurance pursuant to Section 6.3.a, above. CITY and DEVELOPER shall each bear the cost of one half of the title company document preparation and recordation fees. All other costs of escrow, including the fee of the Escrow Holder, if any, shall be borne equally by the Parties. Except as set forth above, no other items shall be prorated at Closing.

Section 6.7 Event of Termination. If this Agreement and/or the Ground Lease is terminated by either Party as provided in this Agreement or the Ground Lease, DEVELOPER shall, within fifteen (15) days of CITY's written request therefor, execute and deliver to CITY a termination agreement, release and quitclaim substantially in the form attached hereto as **Exhibit E**, releasing any and all right, title and interest of DEVELOPER in and to the Site and the Leasehold Improvements to CITY. The Termination, Release and Quitclaim Deed attached hereto as **Exhibit E** may be revised as necessary if this Agreement is terminated before the Ground Lease is delivered by the parties.

Section 6.8 CITY Parking on the Site. Between the date of this Agreement and the date that public parking ceases as provided below, CITY will operate the Site for parking purposes in the ordinary course and will not allow the SITE to be altered in any materially adverse way and will maintain the Site in reasonably good condition and repair and not allow any Hazardous Material release, storage or disposal at the Site. Prior to the Commencement Date, CITY shall control Lot 12 and operate Lot 12 for public parking or such other use as CITY desires. DEVELOPER shall control Lot 12 after the Commencement Date, provided, however, that Lot 12 shall remain open for public parking until the date DEVELOPER, in its sole discretion, advises CITY that the Lots shall no longer be available for public parking; provided, further, however, that DEVELOPER shall give CITY at least thirty (30) days' written notice of the date public parking will no longer be available. CITY shall be responsible for noticing and posting signage regarding the closure of public parking on Lot 12. Minimum Base Rent for Lot 12 which would otherwise commence on the Commencement Date shall be abated for each day Lot 12 remains open for public parking between the Commencement Date and the date Lot 12 is closed to public parking. Except for any claims, causes of action, liabilities, costs or expenses (including reasonable attorney's fees) arising from the actions of DEVELOPER or its Agents, CITY shall indemnify and hold DEVELOPER harmless from any claims, causes of action, liabilities, costs or expenses (including reasonable attorney's fees) which arise from the continued public parking use of the Property following the Commencement Date until the date such parking is to cease pursuant to DEVELOPER's notice to CITY.

ARTICLE 7

CONSTRUCTION OF LEASEHOLD IMPROVEMENTS

Section 7.1 Construction of Leasehold Improvements.

a. Construction of the Leasehold Improvements by DEVELOPER shall be in accordance with the PCP and the Heritage Tree Removal Permit (if applicable), the Ground Lease and this Agreement, and the laws applicable thereto. DEVELOPER shall cause the work to conform with legal safety procedures and shall endeavor, using commercially reasonable

efforts, to cause such work to be undertaken in a prudent, good and workmanlike manner, pursuant to design and construction agreements with reputable general contractors, subcontractors, materialmen, suppliers, architects, designers and other construction professionals. Parking of construction company and construction worker vehicles on CITY streets is specifically prohibited at all times. Therefore, if off-site construction worker parking is needed, it shall not be accommodated by on street parking; rather, it shall be accommodated by DEVELOPER arranging for construction worker parking through private arrangements with private property owners. DEVELOPER shall maintain the Site in a safe condition in compliance with all laws and provide regular removal, cleanup and proper disposal of all trash, rubbish, refuse and construction debris generated by DEVELOPER during construction of the Project. DEVELOPER shall be responsible for any and all damage caused by DEVELOPER to off-Site land, any streets, or other off-Site improvements. DEVELOPER shall be responsible for providing all security deemed necessary by DEVELOPER to protect the Site and Leasehold Improvements, including construction materials, equipment, furniture, fixtures and inventory, during the construction of the Project. CITY shall not provide or be responsible for any such security or protection.

b. CITY shall issue a Certificate of Occupancy to DEVELOPER individually for the Project within five (5) days after final inspection of the Leasehold Improvements. The issuance of the Certificate of Occupancy for the Project shall be conclusive evidence of, to CITY's knowledge, the construction and completion of the Project in accordance with this Agreement and the full performance by DEVELOPER of the agreements and covenants contained in this Agreement. DEVELOPER, its lender or lenders and their respective successors and assigns may rely on such Certificate of Occupancy.

c. CITY and DEVELOPER acknowledge that from time to time during construction of the Project, Hope Street may need to be closed to traffic. DEVELOPER and CITY shall work together in good faith to minimize the number of closures, the length of any closure, and to provide adequate advance public notice of any closure. DEVELOPER shall not close Hope Street to traffic without CITY's prior written consent. DEVELOPER shall submit a traffic control plan for approval by the CITY Traffic Engineer for all construction activities and street closures.

Section 7.2 Insurance. At all times during the construction of the Leasehold Improvements, DEVELOPER shall maintain the insurance required under Article 6 of the Ground Lease and all other covenants within said Article 6 of the Ground Lease are hereby incorporated herein by this reference as though fully set forth.

Section 7.3 Work Prior to Commencement Date. If DEVELOPER is permitted to enter the Site and/or perform any inspection work or construct any work of improvement prior to the Commencement Date, DEVELOPER shall comply with the provisions of Section 2.5 of the Ground Lease and conditions imposed under applicable grading or building permits issued by CITY.

Section 7.4 Easements, Access and Permits. CITY agrees to cooperate with DEVELOPER in granting such easements for utilities affecting the Site as may be reasonably necessary or desirable for DEVELOPER's use, development and enjoyment of the Site or which

may otherwise be required by applicable Laws. DEVELOPER reserves the right to request variances, zoning amendments, approvals and/or permits in connection with DEVELOPER's use and development of the Site, and CITY, in its capacity as fee owner of the Site, agrees to execute any such reasonable application (subject to reasonable modifications) and not object to the filing thereof; provided that after giving effect to any such variances, zoning amendments, approvals and/or permits, the use of the Site will remain consistent with the proposed Project as it exists as of the Effective Date. Nothing herein shall limit in any manner CITY's rights, powers and authority under its police powers.

ARTICLE 8 OTHER MISCELLANEOUS AGREEMENTS

Section 8.1 Permitted Uses. DEVELOPER shall use the Site solely for development and operation of the Project and related ancillary uses.

Section 8.2 Tenant Mortgages. The provisions of Article 12 of the Ground Lease are hereby incorporated herein, except that, to the extent applicable, (i) any reference to "Tenant" shall be deemed to mean DEVELOPER, (ii) any reference to "Landlord" shall be deemed to mean CITY, and (iii) any reference to "Lease" shall be deemed to mean this Agreement.

Section 8.3 DEVELOPER's Indemnity.

a. Scope of DEVELOPER's Indemnity. Subject to the limitations contained in Section 8.6(b) below, DEVELOPER shall defend with competent counsel reasonably acceptable to CITY, indemnify, protect and hold harmless CITY and each of the CITY Indemnitees from any and all Claims, to the extent arising from:

(i) The negligent act or omission or willful misconduct of DEVELOPER or DEVELOPER's Agents in or on the Site or the Project at any time during this Agreement; or

(ii) Any construction or other work undertaken by DEVELOPER on the Site or the Project, whether prior to or during the term of this Agreement; or

(iii) Any Event of Default under this Agreement by DEVELOPER; or

(iv) Any accident, injury or damage, howsoever and by whomsoever caused, to any person or property, occurring on the Site or the Project during the term of this Agreement; or

(v) Any accident, injury or damage caused by DEVELOPER or DEVELOPER's Agents arising from or in connection with any activity related to the Project; or

(vi) Any violation of DEVELOPER's obligations under Section 8.4; or

(vii) DEVELOPER's violation of Law.

b. Limitations on DEVELOPER's Indemnity. Notwithstanding anything to the contrary in this Section 8.6, in no event shall DEVELOPER have any obligation under this Section 8.6 to indemnify, defend or hold harmless CITY or any other CITY Indemnatee from any Claim, nor to waive any Claim which DEVELOPER may have against CITY or another CITY Indemnatee, to the extent the Claim arises from:

(i) The negligent act or omission or willful misconduct of CITY or CITY's Agents in or on the Site or the Project during the term of this Agreement;

(ii) A breach of the obligations of CITY set forth in this Agreement;

(iii) CITY's violation of Law;

(iv) Any Environmental Claim, Environmental Construction Activity, Contamination, Hazardous Materials Activity or Hazardous Materials Law (which shall be governed solely by the provisions of Section 4.5 of the Ground Lease). Notwithstanding anything to the contrary contained in this Agreement, under no circumstances shall DEVELOPER be obligated to indemnify CITY with respect to environmental conditions and Hazardous Materials affecting the Site at or prior to the Commencement Date, including, without limitation, Preexisting Environmental Conditions.

(v) The matters which CITY has indemnified DEVELOPER against pursuant to Section 6.8 of this Agreement.

c. Occurrence-Based Indemnity. The foregoing indemnities are intended to be "occurrence-based" indemnities rather than "claims-made" indemnities. Accordingly, the provisions of this Section 8.6 shall survive the expiration or earlier termination of this DDA to the extent the injury or damage giving rise to the Claim occurs prior to such expiration or termination.

ARTICLE 9 TERMINATION, DEFAULT AND REMEDIES

DEVELOPER shall have the right to terminate this DDA and the Ground Lease pursuant to the terms and conditions set forth in Sections 9.1 through 9.4 below. Any such termination shall be a termination of the DDA and both Ground Leases. DEVELOPER shall not have the right to terminate only one Ground Lease.

Section 9.1 DEVELOPER's Remedies and Termination Rights.

a. Contamination Discovered During Construction of Project: DEVELOPER's Termination Rights. If, during excavation of the Site, any Contamination (other than DEVELOPER's Contamination) is discovered or encountered on the Site and removal or remediation of the Site is estimated to cost more than One Million Dollars (\$1,000,000) considering all out-of-pocket costs, or is estimated to delay completion of the Project by more than 270 days, then, at DEVELOPER's election and in addition to its other rights and remedies, DEVELOPER shall have the right to terminate this Agreement and the Ground Lease by delivery of written notice to CITY specifying the date of such termination (which date shall not be later

than six (6) months after the date of the notice) together with reasonably detailed documents demonstrating the cost or delay basis for DEVELOPER's right to terminate pursuant to this provision (i.e., documenting the costs and delay of the removal or remediation with third party reports from reputable qualified parties). Within the earlier of (a) forty-five (45) days after the earlier of the date that DEVELOPER (i) reasonably determines that removal or remediation of the Site will cost more than One Million Dollars (\$1,000,000) considering all out-of-pocket costs, or is estimated to delay completion of the Project by more than 270 days, or (ii) discovers the full extent of the Contamination, or (b) ninety (90) days after the Contamination is discovered, DEVELOPER shall notify CITY if DEVELOPER believes its right to terminate is triggered and, if so, whether DEVELOPER elects to terminate (in which case, the notice shall be accompanied by the reports described above). If DEVELOPER fails to notify CITY of its election to terminate pursuant to this Section 9.1.a within the foregoing notice period, DEVELOPER shall be deemed to have elected not to terminate.

If DEVELOPER elects to terminate this Agreement and the Ground Lease on the basis described above, then CITY shall have the right to have a reputable environmental consultant review the findings and conclusions of DEVELOPER's reports (provided as described above) within forty (40) days following CITY's receipt thereof and shall notify DEVELOPER of CITY's intention to conduct such review within ten (10) days after delivery by DEVELOPER of DEVELOPER's determination regarding the Site. If CITY's environmental consultant reasonably objects to the remediation costs or delay as set forth in DEVELOPER's report, CITY's consultant and DEVELOPER's consultant shall meet and confer in order to resolve such objection within fifteen (15) days following the expiration of the aforementioned forty (40) day period. If the consultants are unable to resolve such objection within said fifteen (15) day period, the dispute shall be mediated in accordance with Section 15.6 of the Ground Lease. In no event shall the provisions of this section limit or otherwise affect in any manner Landlord's Environmental Indemnity Obligations under the Ground Lease or require CITY to refund any costs or expenses incurred by DEVELOPER in connection with the Project.

If DEVELOPER does not elect to terminate as provided hereinabove, CITY shall, at CITY's sole cost and expense, procure a work plan for clean-up and remediation of such Contamination from a mutually acceptable environmental consultant, as well as a reasonably detailed cost estimate for the work described in such work plan; thereafter, CITY will clean up and/or remediate such Contamination pursuant to a work plan approved by DEVELOPER (which approval shall not be unreasonably withheld) and otherwise pursuant to the provisions of Section 4.5.2.3 of the Ground Lease, provided, however, that if the estimate for costs to be incurred for cleanup and related activities in accordance with such work plan exceeds a total of One Million Dollars (\$1,000,000) in the aggregate for both Lot 4 and Lot 8, CITY may elect either (i) to terminate this Agreement and the Ground Lease, or (ii) pay all amounts in excess of One Million Dollars (\$1,000,000). If CITY elects to terminate, CITY shall so notify DEVELOPER in writing within thirty (30) days of its delivery of the work plan and cost estimate to DEVELOPER. Notwithstanding the foregoing provisions of this Section 9.1.a, if CITY elects to terminate this Agreement pursuant to the provisions set forth above, DEVELOPER will have the right, to be exercised by written notice delivered to CITY within thirty (30) days following CITY's delivery of its termination notice to DEVELOPER, to elect to bear the cost of such remediation to the extent such cost is in excess of One Million Dollars (\$1,000,000), in which event (x) CITY will proceed with, and complete, the required remediation in accordance with the

approved work plan and cost estimate, (y) CITY's termination of this Agreement will be null and void and of no further force or effect, and (z) this Agreement shall continue in full force and effect. CITY shall obtain a no further action letter, closure letter or other evidence from the applicable Governmental Authority confirming that the remediation has been fully and satisfactorily completed, and shall deliver a copy of any such letter or evidence to DEVELOPER. From and after the time that CITY has spent One Million Dollars (\$1,000,000) on remediation of the Site, through completion of the remediation, CITY shall provide DEVELOPER with copies of all invoices received by CITY regarding such remediation, and invoices setting forth in reasonable detail all other costs incurred by CITY regarding the remediation. If DEVELOPER elects to pay amounts in excess of One Million Dollars (\$1,000,000) pursuant to the provisions of this Section above, DEVELOPER shall pay to CITY, as additional rent under the Ground Lease, the amount set forth in such invoices no later than thirty (30) days after the receipt by DEVELOPER of such invoices. If DEVELOPER defaults in its obligation to reimburse CITY for the cost of remediation as provided herein, CITY may cease performing any remediation and terminate this Agreement and the Ground Lease. Nothing herein shall be deemed to impose any obligation on CITY with respect to Contamination not on the Site, including without limitation, any remediation obligation.

b. Duty to Restore. If DEVELOPER terminates this Agreement and the Ground Lease pursuant to this Section 9.1, then DEVELOPER shall promptly restore the Site to substantially the condition it was in prior to the Commencement Date or the date any work was performed by DEVELOPER prior to the Commencement Date pursuant to Section 7.3.

Following termination of this Agreement pursuant to this Section 9.1, except for the satisfaction by DEVELOPER of its obligations under Section 9.1.b, the Parties shall have no further liabilities and/or obligations under this Agreement, or the Ground Lease, except to the extent such obligations expressly survive the earlier termination thereof.

Section 9.2 Termination for Failure to Approve PCP. If DEVELOPER has submitted a complete Formal Project Application for the PCP, but the City Council has not given the City Council Approval within nine (9) months after such Application has been deemed complete (subject to the official schedule of City Council meetings), DEVELOPER shall have the right to terminate this Agreement and the Ground Lease. DEVELOPER and CITY shall use reasonable good-faith efforts to obtain approval of the PCP and all other discretionary approvals required for the Project (including the supply of the Parking Funds and Development Funds).

In the event of termination pursuant to this Section 9.2, neither Party shall be obligated to the other for any damages, refunds or other reimbursements. In no event, however, shall the foregoing relieve either Party from its obligations to use good-faith efforts to obtain the City Council Approval within the time frames set forth in Articles 3 and 4 of this Agreement, and any failure to do so shall entitle the other Party to pursue such remedies as may be available at law or in equity.

Section 9.3 Termination Based on Material Changes to Project. Except as set forth below in this Section 9.3, if the City Council imposes "Material Changes" (as defined below) on the Project at the time it considers the PCP, then DEVELOPER shall have the right to request a continuance at the Council meeting for up to two (2) weeks to study the Material Changes.

If the City Council fails to grant the continuance and approves the PCP with the Material Changes, then DEVELOPER shall have seven (7) calendar days to elect either: (a) to treat the approval as a denial and terminate; or (b) to request reconsideration by the City Council. In the case of (b), if a further hearing is granted, it shall be held within (i) thirty (30) days of the initial City Council hearing to approve the PCP; or (ii) two (2) Regular or Adjourned Regular City Council meetings, whichever period is longer.

If a decision to approve the PCP with the Material Changes is rendered by the City Council either (i) following a refusal to grant a continuance or reconsideration, (ii) following a granted continuance, or (iii) as a result of the reconsideration of the matter, DEVELOPER shall have seven (7) calendar days from the date of that decision to consider said approval a denial and elect to terminate. If DEVELOPER elects to terminate pursuant to this Section 9.3, CITY shall not be required to refund any costs or expenses incurred by DEVELOPER in connection with the Project, the Ground Lease or this Agreement.

Prior to any termination by DEVELOPER pursuant to this Section 9.3, DEVELOPER shall give CITY written notice of its intent to terminate describing in reasonable detail the Material Change and the material adverse impact of the Material Change. If CITY disagrees that a Material Change has been imposed, the Parties shall meet and confer in good faith to resolve the dispute and if unable to do so, shall submit same to mediation, which the parties acknowledge is non-binding, pursuant to Section 15.6 of the Ground Lease.

Following termination by DEVELOPER pursuant to this Section 9.3, except for the satisfaction by CITY of its obligations under this Section 9.3, the Parties shall have no further liabilities and/or obligations under this Agreement, or the Ground Lease, except to the extent such obligations expressly survive the earlier termination thereof.

For Purposes of this Agreement, the term “Material Changes” imposed by the City Council shall mean, subject to the last sentence of this paragraph, any requirement not contemplated by this Agreement or change in the development program described in this Agreement which DEVELOPER determines in its good faith judgment materially adversely affects the Project including the economics (development costs or future revenues), the Brand or operation of the Project including any change from the program for the proposed Project. Notwithstanding the foregoing, any architectural or design requirement or any other development requirement required under applicable Law or that the CITY has generally required on other similar office buildings or hotels, respectively, that have obtained a Certificate of Occupancy during or after calendar year 2009 and before the date of this Agreement shall not be a Material Change. Furthermore, any change that results in an economic impact of One Million Dollars (\$1,000,000) or less in the development and construction of the Project, or less than One Million Dollars (\$1,000,000) or less in the cost to operate the Project during the first two (2) operating years of the Project shall not be a Material Change.

Section 9.4 Termination Based on Legal Challenge. If an action is filed challenging City Council Approval of the Project or any part thereof within ninety (90) days of the date of City Council Approval, DEVELOPER and CITY shall use their respective commercially reasonable efforts to cooperate, at no cost to CITY, in the said litigation and present a unified defense to the extent practical; provided, however, if DEVELOPER determines in good faith that

the litigation cannot be resolved in a manner, time, cost or terms reasonably acceptable to DEVELOPER, DEVELOPER may elect to terminate pursuant to this section by providing written notice of termination to CITY. CITY shall not be obligated to refund or reimburse DEVELOPER for any expenses or costs incurred in connection with the Project.

Following termination by DEVELOPER pursuant to this Section 9.4, except for satisfaction by CITY of its obligation to cooperate in the litigation under this Section 9.4, the Parties shall have no further liabilities and/or obligations under this Agreement, or the Ground Lease, except to the extent such obligations expressly survive the earlier termination thereof.

Section 9.5 Default and Cure. If either Party fails to comply with the terms of this Agreement, then the nondefaulting Party shall notify the defaulting Party of such failure in writing, which notice must include a reasonably detailed description of the default (a "Notice of Default"). Subject to any provision providing for longer or shorter notice and cure rights, on or before the thirtieth (30th) day following a receipt of a Notice of Default, the defaulting Party shall: (i) cure the default; or (ii) if the default cannot reasonably be cured within the thirty (30) day period, commence to cure the default and thereafter diligently pursue the cure to completion with such additional time necessary to complete such cure. If a material default is not cured within the time allowed, or a cure does not commence in accordance with the preceding sentence, the nondefaulting Party shall have the right to pursue any or all remedies available under this Agreement, at law or in equity, serially or concurrently. In no event shall this section be construed as relieving any Party from their obligation(s) under this Agreement or in any way interfering, suspending or extending the obligations of the Parties pursuant to this Agreement, provided the provisions of this Section 9.5 above shall apply to those obligations.

Section 9.6 CITY Termination Rights. CITY shall have the right to terminate this Agreement and the Ground Lease on thirty (30) days' written notice to DEVELOPER in the event DEVELOPER fails to timely comply with any of the following provisions:

1. File a Project Application within the time period provided for in Section 4.1.a.2 of this Agreement, as the same may be extended by Section 4.2 and/or 12.5 of this Agreement, a Force Majeure Event or delay by CITY.
2. Submit a Building Permit Application within 330 days after City Council Approval of the Project, except to the extent extended by Section 4.2 and/or 12.5 of this Agreement, a Force Majeure Event or delay by CITY.
3. Close on a construction loan or loans for construction of the Project within ninety (90) days after the date CITY notifies DEVELOPER with a Notice of Intent, except to the extent extended by Section 12.5 of this Agreement, a Force Majeure Event or delay by CITY. Start construction of the Project within five (5) months of the Commencement Date, except to the extent extended by a Force Majeure Event or delay by CITY.

4. Complete shell and core of the Project and open the public parking for 24 hour per day, 7 day per week operation within twenty-four (24) months of the Start of Construction, except to the extent extended by a Force Majeure Event or delay by CITY; provided, however, CITY's right to terminate shall be subject to the leasehold mortgagee protection provisions of the Ground Lease.
5. Obtain a Certificate of Occupancy for the Project within twenty-four (24) months of Start of Construction, except to the extent extended by a Force Majeure Event or delay by CITY; provided, however, CITY's right to terminate shall be subject to the leasehold mortgagee protection provisions of the Ground Lease.
6. Pay any Rent when and as due pursuant to the terms of the Ground Lease, subject to the extensions provided for in said sections and subject to all other notice provisions and cure rights provided in the Ground Lease and herein and the leasehold mortgagee protection provisions of the Ground Lease.
7. If DEVELOPER utilizes the financing extension provided for in Section 12.5, then (i) within ninety (90) days after the Economic Feasibility Factors are satisfied, DEVELOPER shall have delivered to CITY a financing commitment (in standard form) for construction financing of the Project from a lender selected by DEVELOPER, (ii) within thirty (30) days thereafter DEVELOPER shall meet with CITY to determine a reasonable projected closing and Commencement Date given all the circumstances then known, and (iii) the construction loan shall close and the Commencement Date shall occur not later than the earlier of one hundred eighty (180) days after the loan commitment is delivered and the expiration of the 42-month extension provided in Section 12.5, except to the extent extended by CITY; provided, however, if at the time the Economic Feasibility Factors are satisfied, there are less than nine (9) months prior to the expiration of the 42-month extension provided in Section 12.5, DEVELOPER may request an extension of the 42-month period and CITY shall consider an extension of the same as needed for DEVELOPER to obtain its financing commitment and close the construction loan. DEVELOPER acknowledges that at the time of such request, economic and other circumstances may have changed. Accordingly, the granting or denying of any extension beyond 42 months shall be at CITY'S sole and absolute discretion with no requirement of reasonableness.

If this Agreement and the Ground Lease are so terminated by CITY pursuant to this Section 9.6, then the Parties shall have no further rights or obligations to the other except for those obligations that survive termination of this Agreement and the Ground Lease, including,

without limitation, any payment obligations of either party then outstanding and the respective obligations of each party under the indemnity provisions of this Agreement and the Ground Lease.

Notwithstanding anything to the contrary contained herein, once construction of the Hotel or the Office Building has commenced, CITY shall not have the right to terminate this DDA or the Ground Lease, except as expressly provided herein or in the Ground Lease.

ARTICLE 10 TAXES.

Section 10.1 Property and/or Possessory Interest Tax. The Tenant under the Ground Lease will be responsible for and will pay all possessory interest tax corresponding to the period within the term of the Ground Lease. The Tenant under the Ground Lease will readily provide to CITY and Santa Clara County, all information that is required by the County Assessor to determine the value of Tenant's interest in the Leasehold Improvements and the leasehold interest during both the construction and operation period of the Project.

ARTICLE 11 GUARANTIES AND CITY FINANCIAL PARTICIPATION

Section 11.1 Completion Guaranties. Prior to Start of Construction of the Project or any part thereof, DEVELOPER shall deliver to CITY Completion Guaranties to ensure completion of the construction of the Project in substantially the form acceptable to DEVELOPER's construction lender, with only changes necessary such that the Completion Guaranties are in favor of CITY and applicable to the terms of this Agreement, provided however, in all events there shall be one or more Completion Guaranties by one or more Completion Guarantors in favor of CITY satisfying or exceeding the minimum net worth, liquidity, and other criteria required by DEVELOPER's construction lender. CITY will accept the guarantors approved by the construction lender and Completion Guaranties in substantially the same form approved by the construction lender. The Completion Guaranties will only be in effect if and when a construction loan is in place. DEVELOPER, in lieu of providing Completion Guaranties, may elect in its discretion to post a completion bond by a bonding company reasonably satisfactory to CITY, rated not less than AA+: XV in the latest Best's Insurance Guide and in form reasonably satisfactory to CITY.

Section 11.2 Construction Guaranties and Assurances.

a. DEVELOPER shall cause the Project related Leasehold Improvements to be constructed in accordance with the standards necessary to construct a quality residential Project which includes not less than the amenities described in the definition of "Project" herein and substantially complies with the representations set forth in DEVELOPER'S Proposal. DEVELOPER will not cause, permit or allow any material deviations from the plans approved by the City Council without the prior written approval of the City Council. Construction quality shall be substantially equal to or greater than the quality of the "Comparable Office Buildings" as defined in the Ground Lease.

Section 11.3 CITY Financial Participation.

a. ***To be determined.***

b. **Development Funding.** DEVELOPER shall keep CITY informed regarding progress on obtaining a construction loan and shall notify CITY when it receives a loan commitment, and when it is prepared to close its construction loan so that CITY, if it elects, may begin the process of issuing any COPs or other indebtedness in connection with its obligation to provide Development Funding.

c. **Start of CITY Funding.** Notwithstanding any other provision herein to the contrary, CITY shall not be obligated to provide any Funds until after the construction loan has closed.

Section 11.4 **Draw Requests.** DEVELOPER shall not submit more than one (1) Draw Request per month. When DEVELOPER believes it is entitled to a disbursement of Funds, DEVELOPER shall furnish CITY a draw request for Funds submitted by DEVELOPER to CITY in a form reasonably acceptable to CITY ("Draw Request") which sets forth the amount of the requested disbursement with all or some of the following (as requested by CITY in its reasonable discretion), all in form reasonably satisfactory to CITY:

a. A Draw Request, together with AIA Forms G702 and G703 (and such other forms as may from time to time be approved or required by CITY in its reasonable discretion), setting forth such details concerning the construction of the Leasehold Improvements as CITY may reasonably require, including the amounts expended to the date of the Draw Request for the Leasehold Improvements, and the amounts then due and unpaid for construction of the Leasehold Improvements.

b. The certification by DEVELOPER, by DEVELOPER's architect (to its best knowledge at the time of the certification), by DEVELOPER's general contractor (to its best knowledge at the time of the certification), and, at CITY's option, by an independent architect or engineer of CITY's selection, that:

1. all work performed is in substantial accordance with the PCP;

2. all licenses and permits required by any Governmental Authority for the Leasehold Improvements as then completed have been obtained and will be exhibited to CITY upon request; and

3. the Leasehold Improvements as then completed do not violate, and, if further completed in accordance with the PCP, will not violate, any applicable law, ordinance, rule or regulation.

c. Paid invoices and unconditional (other than receipt of the payment requested) lien waivers from DEVELOPER's general contractor, and at CITY's option, from the major subcontractors and other subcontractors, relating to the construction of the Leasehold Improvements for all work through the date of the previous Draw Request, and invoices from the general contractor and from the major subcontractors, and at CITY's discretion other subcontractors for all work covered by the current Draw Request.

d. Evidence that any inspection required by any Governmental Authority as of such date has been completed with results satisfactory in all material respects to that Governmental Authority.

e. Full unconditional lien waivers from the general contractor and all subcontractors with respect to all prior disbursements of Funds.

f. Such other information and documents as CITY may reasonably require related to such Draw Request.

ARTICLE 12 GENERAL PROVISIONS

Section 12.1 Process for Reimbursements. In all cases where reimbursement is authorized herein, the reimbursement shall be made promptly in conformance with the terms of this Agreement, and in no event later than thirty (30) days following the submission of valid receipts or other supporting documentation of actual costs incurred to the Party responsible for reimbursement. In the event a dispute arises as to the amount to be reimbursed, the Parties shall meet and confer to resolve the dispute. If the Parties are unable to so resolve the dispute, the dispute shall be submitted to mediation pursuant to Section 15.6 of the Ground Lease. Notwithstanding the foregoing, the disbursement of Parking Funds and Development Funds shall be governed by the terms of Sections 11.3 and 11.4.

Section 12.2 Notices, Demands and Communications. Any notice required or desired to be given pursuant to this Agreement shall be in writing with copies directed as indicated below and shall be personally delivered, or in lieu of personal delivery, by depositing same with a prepaid commercial overnight courier for next-day delivery, or by United States registered or certified mail, return receipt requested, postage prepaid, with a signed receipt. Any notice shall be deemed to be effective on the date of receipted delivery, refusal to accept delivery or when delivery is first attempted but cannot be made due to a change of address for which no notice is given. If such notice shall be addressed to CITY, the address of CITY is:

CITY: City of Mountain View
 Attention: City Manager
 500 Castro Street
 P.O. Box 7540
 Mountain View, CA 94039-7540

With a copy to:

City of Mountain View
500 Castro Street
P.O. Box 7540
Mountain View, CA 94039-7540
Attention: City Attorney

In the case of any notice containing financial data, with a copy to:

City of Mountain View
500 Castro Street
P.O. Box 7540
Mountain View, CA 94039-7540
Attention: Finance Administrative Services Director

And if addressed to DEVELOPER, the address of DEVELOPER is:

DEVELOPER: _____

Attention: _____

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section 12.2. Delivery shall be deemed to have occurred at the time indicated on the receipt for delivery or refusal of delivery.

Section 12.3 Nonliability of Officials, Employees and Agents.

a. No direct or indirect officer, member, official, employee or agent of CITY shall be personally liable to DEVELOPER or any successor-in-interest, or any Person or other entity, in the event of any default or breach by CITY or for any amount which may become due to DEVELOPER or other Person or entity or on any obligation under the terms of this Agreement.

b. No direct or indirect officer, shareholder, member, director, partner, employee or agent of DEVELOPER shall be personally liable to CITY or any successor-in-interest, or any Person or other entity, in the event of any default or breach by DEVELOPER or for any amount which may become due to CITY or other Person or entity or on any obligation under the terms of this Agreement.

Section 12.4 Force Majeure Extension. All specified time periods or dates in this Agreement can be extended as a result of a Force Majeure Event. A Force Majeure Event will extend time periods only for specific requirements or events affected by the Force Majeure Event. In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in default where delays or defaults are due to a Force Majeure Event, court order, third-party litigation in connection with Project approvals, including without limitation, CEQA approval, or similar causes (other than lack of funds of either Party, excluding only DEVELOPER's inability to finance the construction if DEVELOPER has exercised the extension provided for in Section 12.5 and such extension is in effect) beyond the control or without the fault of the Party claiming an extension of time to perform.

An extension of time for a Force Majeure Event will be deemed granted if notice by the Party claiming such extension is sent to the other within twenty (20) days from the commencement of the Force Majeure Event and such extension of time is not rejected in writing by the other Party within twenty (20) days of receipt of the notice. If rejected in whole or in part,

the Parties shall meet and confer in good faith to resolve the dispute and if unable to do so, shall submit same to mediation pursuant to Section 15.6 of the Ground Lease.

After the issuance of building permits with respect to the Project, the provisions of this Section 12.4 shall not apply to nor operate to excuse DEVELOPER from the payment of rent or any other payments strictly in accordance with the terms of this Agreement or the Ground Lease; provided, however, that the provisions of this Section 12.4 shall continue to apply to all non-monetary matters. Notwithstanding anything herein to the contrary, except in the case of the initial construction of the Project, if an extension of time as a result of a Force Majeure Event lasts longer than two hundred seventy (270) days, the Party who did not claim the extension of time may terminate this Agreement and the Ground Lease upon thirty (30) days' written notice to the other Party; provided that the Party claiming the extension of time can vitiate such termination notice by waiving the extension of time and completing performance of the obligations extended by the Force Majeure Event within said 30-day period.

Section 12.5 Title of Parts and Sections. Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of its provision.

Section 12.6 Applicable Law. This Agreement shall be interpreted under and pursuant to the laws of the State of California. The state courts located in Santa Clara County, California shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party hereby consents to the jurisdiction of such courts and waives any right it may otherwise have to challenge the appropriateness of such forums.

Section 12.7 Severability. If any term, provision, covenant or condition of this Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 12.8 Legal Actions. In the event either party shall bring any action, mediation or legal proceeding for an alleged breach of any provision of this Agreement, to terminate this Agreement, or to enforce, protect, determine or establish any term or covenant of this Agreement or the rights hereunder of either party, the prevailing party, in addition to whatever other relief it may be entitled, shall be entitled to recover from the nonprevailing party, as a part of such action or proceedings or in a separate action brought for that purpose, reasonable attorneys' fees, consultants' and experts' fees, expenses and court costs.

In the event legal action is commenced by a third party or parties, the effect of which is to directly or indirectly challenge or compromise the enforceability, validity or legality of this Agreement, the Ground Lease, and/or the power of CITY to enter into the foregoing or perform its obligations hereunder or thereunder, or the zoning, entitlements or approvals required for the Project, either CITY or DEVELOPER may (but shall have no obligation to) defend such action. Upon commencement of any such action, CITY and DEVELOPER shall meet in good faith and seek to establish a mutually acceptable method of defending such action and shall

cooperate in good faith in defense of such action. Each party shall bear its own costs and attorneys' fees incurred in connection with any such defense.

Section 12.9 Binding Upon Successors: Covenants to Run With Land. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest and assigns of each of the Parties. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor, successor or assign of such Party, including without limitation any owner, operator, franchisee, subtenant, or similar Person, who has acquired an interest in compliance with the terms of this Agreement, the Ground Lease or under the Law.

The terms of this Agreement shall run with the land and shall bind all successors-in-title to the Site until the termination of this Agreement. Every contract, deed or other instrument hereafter executed covering or conveying the Site or any portion thereof shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless CITY and DEVELOPER expressly releases the Site or the applicable portion of the Site from the requirements of this Agreement.

Section 12.10 No Waiver. The waiver by CITY or DEVELOPER of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained.

Section 12.11 Remedies Cumulative. All remedies herein conferred upon CITY or DEVELOPER shall be deemed cumulative, and no one remedy shall be exclusive of any other remedy herein conferred or created by law or in equity.

Section 12.12 Covenant of Fair Dealing. Each party hereto agrees to act reasonably and in good faith with respect to the performance and fulfillment of the terms of each and every covenant and condition contained in this Agreement.

Section 12.13 Parties Not Coventurers. Nothing in this Agreement is intended to nor does establish the Parties as partners, coventurers or principal and agent with one another.

Section 12.14 Provisions Not Merged with Ground Lease. None of the provisions of this Agreement shall be merged or extinguished by the Ground Lease or any other instrument transferring title to any portion of the Site, and neither the Ground Lease nor any other instrument transferring title to any portion of the Site shall affect this Agreement. Nothing contained herein shall be deemed a conveyance by CITY of any fee interest in the Site.

Section 12.15 Entire Agreement; Integration. This Agreement, the Exhibits hereto, the Ground Lease and the Exhibits thereto constitute the entire agreement between the Parties with respect to the subject matter hereof, and there are no such agreements or representations between the Parties except as expressed herein and such agreements are fully integrated. Except as otherwise provided herein, no subsequent change or addition to this Agreement shall be binding unless in writing and signed by the Parties hereto. This Agreement and the Ground Lease shall be construed harmoniously so as to give effect to all of the terms, covenants and conditions of

both documents to the greatest extent permitted. In the event of a conflict between the terms of the Ground Lease and the terms of this Agreement, the terms of the Ground Lease shall control.

Section 12.16 Counterparts. This Agreement may be executed in counterparts and multiple originals. Facsimile or electronic signatures shall have the same force and effect as an original signature.

Section 12.17 Amendments. The Parties may amend this Agreement, extend applicable time periods and/or waive any obligation only by means of a writing signed by both Parties. The City Manager is authorized by this Agreement to bind CITY to written amendments or modifications if the amendments or modifications are nonmonetary in nature and, in the City Manager's sole discretion, nonmaterial in light of the Project as a whole. CITY and DEVELOPER agree to mutually consider reasonable requests for amendments to this Agreement which requests may be made by any of the Parties hereto, provided that such requests are consistent with this Agreement and would not substantially alter the rights and obligations of the Parties hereunder.

Section 12.18 Recordation of Agreement. DEVELOPER and CITY consent to the recordation of a memorandum of this Agreement at the Closing in the form of Exhibit D attached hereto in the records of the County Recorder of Santa Clara County, California.

Section 12.19 Authority. Each party hereto represents and warrants to the other that it has the legal power, right and authority to enter this Agreement, and that all requisite action has been taken or obtained by said party in connection therewith. Each signatory of a party hereto represents and warrants to the other that he or she is duly authorized to execute this Agreement on behalf of said party and binds said party to the terms and conditions hereof.

Section 12.20 Assignment. Except as provided in the Ground Lease, this Agreement shall not be assignable without the written consent of the CITY, which consent shall be in the CITY's sole and absolute discretion, provided that so long as The Robert Green Company or any Affiliate of The Robert Green Company remains the manager of the project development, changes to the direct or indirect members or other investors may occur without the consent of the CITY, but CITY shall be notified of each such change so CITY can account for potential Participation Rent.

Section 12.21 Real Estate Commissions. Each party shall defend, indemnify, protect and hold the other party harmless from any and all claims resulting from any breach by the indemnifying party of the representations, warranties and covenants set forth, below. CITY will not pay any commissions whatsoever to brokers in this transaction. For clarity, it is understood by the Parties that future sale, refinancing or transfer transactions may include brokers, who will be paid by DEVELOPER out of those future transaction proceeds.

a. CITY. CITY hereby represents and warrants to DEVELOPER that CITY has used no real estate broker, agent, finder or similar person to whom a brokerage commission, finder's fee or other compensation would be payable in connection with the transaction contemplated under this Agreement and the Ground Lease.

b. DEVELOPER. DEVELOPER represents and warrants that, except as expressly provided herein, it has used no real estate broker, agent, finder or similar person to whom a brokerage commission, finder's fee or other compensation would be payable in connection with the transaction contemplated under this Agreement and the Ground Lease and has no obligation for real estate commissions beyond said written agreement.

Section 12.22 Hold Harmless. The Parties recognize that the Project contemplated by this Agreement is contingent in large part on the approval by the City Council of a PCP application. Successful approval of the application depends on a number of contingencies and variables and the performance of certain ministerial and discretionary functions, including, but not limited to, noticing, scheduling of hearings, compliance with the California Environmental Quality Act and a host of other requirements that must be followed. Both Parties acknowledge they will pursue approval of the Project in good faith; however, the parties recognize that when exercising its approval authority, the City Council will be acting in a quasi-judicial capacity and may only approve the Project with conditions and only after a public hearing at which evidence is required to be taken and considered by the decision-maker prior to rendering a decision on the application. For that reason, and except for those remedies otherwise provided in this Agreement, the Parties agree to hold each other harmless from any liability or claims of same between DEVELOPER and CITY that may otherwise arise out of this Agreement by virtue of the processing and approval or denial of the PCP application, except to the extent that such denial is in violation of applicable laws, ordinances, rules or regulations and other attendant permits thereto. If the PCP or other entitlements are successfully challenged in court or the electoral process, no action shall lie against one Party by the other Party to this Agreement. Notwithstanding the foregoing, DEVELOPER reserves all of its rights and remedies otherwise available at law with respect to the processing and approval or denial of the PCP application by the City Council and in connection with any and all other CITY required approvals, determinations or decisions by the City Council with respect to the Project.

Section 12.23 No Waiver of Police Powers or Rights. In no event shall this Agreement or the Ground Lease be construed to limit in any way (i) CITY's rights, powers or authority under the police power and other powers to regulate or take any action in the interest of the health, safety and welfare of its citizens, or (ii) DEVELOPER's rights and privileges as a corporate resident and/or citizen of the City of Mountain View, State of California, and/or the United States of America as provided under applicable law, except as expressly waived in this Agreement or the Ground Lease.

Section 12.24 Estoppels. At the request of either party, the other party, within ten (10) days following such request, shall execute and deliver to the requesting party a written statement in which such other party shall certify that this Agreement is in full force and effect; that this Agreement has not been modified or amended (or stating all such modifications and amendments); that to such party's knowledge, neither party is in default under this Agreement (or setting forth any such defaults); that to such party's knowledge, there are not then existing set-offs or defenses against the enforcement of any right or remedy of any party, or any duty or obligation of the certifying party (or setting forth any such set-offs or defenses); and as to such other matters relating to this Agreement as the requesting party shall reasonably request.

Section 12.25 Nondiscrimination. DEVELOPER covenants by and for itself, its heirs, executors, administrators and assigns and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition, that there shall be no discrimination against or segregation of any person or group of persons on account of sex, sexual orientation, marital status, age, race, color, religion, political affiliation, creed, national origin, physical or mental disability, military status, gender identity and expression, genetic information or ancestry in the leasing, subleasing, transferring, use or enjoyment of the Site and/or Leasehold Improvements thereon, nor shall DEVELOPER, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, subtenants, licensees, concessionaires, vendees, invitees or customers with respect to the Site and/or Leasehold Improvements or the operation of the Project.

Section 12.26 Public Record Disclosure. The parties recognize and acknowledge that CITY is subject to the California Public Records Act, California Government Code Section 6250 and following. Public records are subject to disclosure.

Section 12.27 Recorded Documents. The documents attached hereto as Exhibits are final documents except with respect to such legal descriptions as are necessary to accurately describe the location of any easements or other rights of way and may be changed or modified only upon the mutual consent of the parties, which shall not be unreasonably withheld.

Section 12.28 Further Assurances. Each party agrees to execute and deliver to the other party such additional documents and instruments and take such actions as the other party reasonably may request in order to fully carry out the purposes and intent of this Agreement and the Ground Lease.

Section 12.29 Term. Except for those obligations which expressly survive the termination of this Agreement, this Agreement shall automatically terminate without any further action of the parties upon an issuance of a Certificate of Occupancy for the initial Leasehold Improvements, provided that the CITY shall execute and deliver such additional documents reasonably required by DEVELOPER to confirm such termination and to record against Lot 12, as applicable.

Section 12.30 Construction of Agreement. The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning, and not strictly for or against CITY or DEVELOPER. Any word contained in the text of this Agreement shall be read as the singular or plural, or in the masculine, feminine, or neuter gender, as may be applicable in the particular context. Any reference to any Section herein shall be deemed to include all subsections thereof unless otherwise specified or reasonably required from the context. Any reference to "days" or "months" herein shall refer to calendar days or months, respectively, unless specifically provided to the contrary.

[The next page is the signature page.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date specified above.

FINANCIAL APPROVAL:

Finance and Administrative
Services Director

APPROVED AS TO FORM:

City Attorney

"CITY":

CITY OF MOUNTAIN VIEW,
a municipal corporation

By: _____
City Manager

"DEVELOPER":

By: _____

Title _____

Taxpayer I.D. Number

EXHIBIT A

LEGAL DESCRIPTION OF LOT 12

EXHIBIT B
GROUND LEASE

EXHIBIT C

MEMORANDUM OF DDA

RECORDING REQUESTED BY

CITY OF MOUNTAIN VIEW

AND WHEN RECORDED RETURN TO:

Attention: _____

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT

THIS MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT ("Memorandum") is entered into as of this ____ day of _____, 2019 by and between THE CITY OF MOUNTAIN VIEW, a California Charter City and municipal corporation ("City"), and _____ ("Developer"), with respect to that certain Disposition and Development Agreement dated as of _____, 2019 ("DDA") by and between City and Developer.

Pursuant to the DDA, City and Developer have set forth certain rights, conditions and obligations regarding the development of a residential project (the "Project") on certain real property located in the City of Mountain View, County of Santa Clara, State of California, as more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

The term of the DDA will expire automatically upon the issuance of a Certificate of Occupancy for the Project (as defined in the DDA). The DDA and Ground Lease are subject to earlier termination pursuant to the terms of the Ground Lease and DDA.

This Memorandum shall incorporate all of the provisions of the DDA as though fully set forth herein. This Memorandum is entered into by the parties for purposes of recordation and shall not be deemed to modify, amend, alter, limit or otherwise change any of the provisions of

the DDA. In the event of any conflict or ambiguity between the terms of this Memorandum and the DDA, the terms of the DDA shall control.

[The next page is the signature page.]

IN WITNESS WHEREOF, each of the parties hereto has executed this instrument as of the date first above written.

"CITY":

"DEVELOPER":

CITY OF MOUNTAIN VIEW,
a California Charter City and municipal
corporation

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

ATTEST:

By: _____
Lisa Natusch
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

FINANCIAL APPROVAL:

By: _____
Finance and Administrative
Services Director

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

) ss.

COUNTY OF SANTA CLARA)

On _____, before me, _____, a Notary Public in and for said state, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for said State

(SEAL)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

) ss.

COUNTY OF SANTA CLARA)

On _____, before me, _____, a Notary Public in and for said state, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for said State

(SEAL)

EXHIBIT D

TERMINATION, RELEASE AND QUITCLAIM DEED

RECORDING REQUESTED BY AND
AFTER RECORDATION RETURN TO:

City of Mountain View
500 Castro Street
Post Office Box 7540
Mountain View, CA 94039-7540

TERMINATION, RELEASE AND QUITCLAIM DEED

THIS TERMINATION, RELEASE AND QUITCLAIM DEED ("Quitclaim Deed") is made and entered into as of this ____ day of _____, 20__ by and between _____ ("Grantor"), and the CITY OF MOUNTAIN VIEW, a California Charter City and municipal corporation ("Grantee"), and recites as follows:

A. Grantee is the fee owner of certain real property located in the City of Mountain View, County of Santa Clara, State of California, as more particularly described in Exhibit A attached hereto (the "Property").

B. Pursuant to that certain Ground Lease dated _____, 20__, as amended ("Ground Lease"), Grantee leased to Grantor, and Grantor leased from Grantee, the Property.

C. Pursuant to that certain Disposition and Development Agreement dated as of _____, 2017 ("DDA"), Grantee and Grantor set forth their respective rights and obligations with respect to the development of a hotel and office building project on the Property ("Project"). The Ground Lease and DDA are collectively referred to herein as the "Project Agreements."

D. The Project Agreements have been terminated in accordance with the respective terms thereof.

E. Grantor and Grantee now desire to evidence the termination of the Project Agreements and Grantor's right, title and interest in and to the Property.

NOW, THEREFORE, Grantor hereby makes the following grant to Grantee, and Grantor and Grantee hereby agree as follows.

1. Quitclaim. Grantor does hereby remise, release and forever quitclaim to Grantee all of Grantor's right, title and interest in and to the Property and Project.

2. Termination. Grantor and Grantee acknowledge and agree that the Ground Lease and DDA have terminated in accordance with the respective terms thereof, and the parties shall have no further rights and obligations to each other under the Project Agreements, except to the extent the provisions of the Project Agreements expressly provide that such rights and obligations shall survive the termination thereof.

3. RELEASE. EACH PARTY HERETO, ON BEHALF OF ITSELF AND ITS AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, SUCCESSORS AND ASSIGNS, HEREBY RELEASES, RELINQUISHES AND WAIVES ANY AND ALL CLAIMS, DEMANDS, ACTIONS, CAUSES OF ACTION, PROCEEDINGS, RIGHTS, OBLIGATIONS, LIABILITIES, COSTS AND EXPENSES IN CONNECTION WITH THE PROJECT AGREEMENTS, EXCEPT TO THE EXTENT THE PROVISIONS OF THE PROJECT AGREEMENTS EXPRESSLY PROVIDE THAT SUCH RIGHTS AND OBLIGATIONS SHALL SURVIVE THE TERMINATION THEREOF, AND HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 AND SIMILAR LAWS WITH RESPECT THERETO. SAID SECTION 1542 READS AS FOLLOWS:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

[The next page is the signature page.]

IN WITNESS WHEREOF, Grantor and Grantee have duly executed this instrument as of the date first above written.

"GRANTEE":

CITY OF MOUNTAIN VIEW,
a California Charter City and municipal
corporation

"GRANTOR":

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

ATTEST:

By: _____
Lisa Natusch
City Clerk

FINANCIAL APPROVAL

By: _____
Finance and Administrative
Services Director

APPROVED AS TO FORM:

By: _____
City Attorney

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

) ss.

COUNTY OF SANTA CLARA)

On _____, before me, _____, a Notary Public in and for said state, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for said State

(SEAL)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

) ss.

COUNTY OF SANTA CLARA)

On _____, before me, _____, a Notary Public in and for said state, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for said State

(SEAL)

EXHIBIT E

Form of Title Policy